



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201529018

042115

Uniform Issue List: 408.03-00

T. EP. RA. T2

Legend:

Taxpayer A =

SEP B =

SEP C =

Bank D =

SEP E =

Custodian F =

Amount 1 =

Amount 2 =

Dear :

This is in response to your request dated October 15, 2014, as supplemented by correspondence dated March 16, 2015, from your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that he received a distribution of Amount 1 from SEP B and Amount 2 from SEP C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the unauthorized

distributions of Amount 1 and Amount 2 by Bank D. Taxpayer A further represents that Amounts 1 and 2 have not been used for any other purpose.

Taxpayer maintained SEP B and SEP C with Bank D. In August, 20 , Bank B, without the knowledge of Taxpayer A, closed SEP B and SEP C and issued distribution checks in Amount 1 and Amount 2, respectively. Bank B indicated the SEPs were closed because they were resigning as custodian. During this time Taxpayer A had just married, was preparing to move, and was awaiting the birth of his daughter. Since Taxpayer A was not expecting a distribution from Bank D, the distribution checks were set aside unopened and were packed for his move with Taxpayer A's other financial documents. The distribution checks were not discovered until Taxpayer A was gathering information for his accountant to prepare his federal income tax return in 20 .

Taxpayer A contacted Bank D and requested that the checks and Form 1009-R, issued in 20 , be voided. On April 18, 20 , Taxpayer A opened SEP E with Custodian F and completed forms to effectuate a trustee-to-trustee transfer of Amount 1 from SEP B and Amount 2 from SEP C to SEP E. Bank B reissued checks in Amounts 1 and 2 payable to Custodian F FBO Taxpayer A and the trustee-to-trustee transfer took place on April 17, 20 .

Based on the facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 and Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if --

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into

such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to Bank D's unauthorized distribution of Amount 1 from SEP B and Amount 2 from SEP C.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from SEP B and Amount 2 from SEP C. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect the transfer of Amount 1 and Amount 2 to SEP E on April 17, 20⁰, such transfers will be considered a valid rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

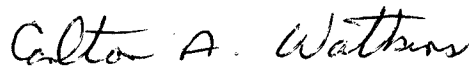
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact
Please address all correspondence to

SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: